

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

MIRANT NEW YORK, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 07-CV-4166
	)	
LOCAL UNION NO. 503 OF	)	
THE INTERNATIONAL	)	
BROTHERHOOD OF ELECTRICAL	)	
WORKERS,	)	
	)	
Defendant.	)	
_____	)	

RULE 26(f) JOINT DISCOVERY PLAN

In accordance with Federal Rule of Civil Procedure 26(f), the parties conferred by telephone for the purpose of discussing the subjects identified in Rule 26(f). At the present time, the parties do not propose any changes to the limitations imposed on discovery by the Federal Rules of Civil Procedure. The parties do not anticipate any issues relating to the discovery of electronically stored information. The parties agree that, pursuant to Federal Rule of Civil Procedure 26(c), the entry of a stipulated confidentiality protective order governing disclosure and use of confidential information may be appropriate in this matter and the parties anticipate that they will agree on the terms of such an order at the appropriate time.

A. Plaintiff: Alston & Bird LLP

Piret Loone, Esq., appearing

90 Park Avenue

New York, NY 10016-1387

Telephone: 212-210-9400

Forrest W. Hunter, appearing *pro hac vice*

Charles A. Gartland II, appearing *pro hac vice*

1201 West Peachtree Street

Atlanta, GA 30309

Telephone: 404-881-7000

B. Defendant: Cohen, Leder Montalbano & Grossman, L.L.C.

Paul A. Montalbano, Esq. appearing

1700 Galloping Hill Road

Kenilworth, New Jersey 07033

Phone: 908 298-8800

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C. Plaintiff's Statement:

Plaintiff seeks (1) permanent injunctive relief preventing Defendant from pursuing any further arbitral proceedings with respect to the MacDonald and Bakker Grievances; (2) a declaration that Plaintiff has no obligation to participate in any of the grievance and arbitration procedures contained in Article 9 of the parties' collective bargaining agreement for any disputes regarding retirement benefits determination made under Plaintiff's plan; and (3) permanent injunctive relief enjoining Defendant from filing or pursuing to arbitration any grievances challenging retirement benefits determinations made under Plaintiff's plan.

D. Defendant's Statement:

Defendant in its Counter-claim seeks entry of an Order compelling Plaintiff to proceed to arbitration over issues raised in two separate grievance (Bakker and MacDonald) which Defendant contends arise under the collective bargaining agreement. Defendant contends that it

would be contrary to public policy to issue a broad injunction prohibiting arbitration over benefits provisions contained in the collective bargaining agreement as the contract contains a broad dispute resolution mechanism.

E. Trial:

Both parties agree that this matter may be tried without a jury, and estimate a trial length of two days.

F. With respect to discovery and an appropriate schedule for the litigation of this matter, the parties hereby propose the following discovery plan:

1. Fact discovery shall commence as of the date of filing of this Joint Discovery Plan.
2. Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a) shall be made on or before December 21, 2007.
3. Interrogatories under Local Rule 33.3(a) shall be served within 15 calendar days from entry of this Order. All depositions shall be completed before April 4, 2008, with each party being limited to five depositions, except with leave of the Court. Interrogatories under Local Rule 33.3(c) shall be served before April 18, 2008. All other limitations regarding the manner and extent of discovery imposed by the Court's Local Rules and the Federal Rules of Civil Procedure are unchanged. All discovery shall be completed before May 20, 2008.
4. At this time, the parties do not anticipate the need to retain experts or to provide a specific schedule for expert discovery. If either party changes its view regarding expert discovery, it shall comply with the expert discovery deadlines set forth in the Federal Rule of Civil Procedure 26.

5. Dispositive motions shall be filed and no later than June 13, 2008. Plaintiff maintains that dispositive motions may be filed before the close of discovery, and Defendant maintains that leave to file dispositive motions should not be granted until discovery has been completed. Responses in opposition to, and replies in support of, any dispositive motions shall be filed in accordance with the deadlines set forth in this Court's Local Rules.

The parties respectfully request that the Court enter an Order reflecting this proposed discovery plan and addressing any other matters that the Court deems appropriate.

Respectfully submitted this 16th day of December, 2007.

/s/Charles A. Gartland II  
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(admitted pro hac vice)  
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*Counsel for Plaintiff Mirant New York, Inc.*

/s/Paul A. Montalbano  
(w/ express permission by CAG)  
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*Counsel for Defendant Local Union No. 503 of  
the International Brotherhood of Electrical  
Workers*

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_____	)	

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2007, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Piret Loone, Forrest W. Hunter, and Charles A. Gartland II, counsel for Plaintiff; Paul A. Montalbano, counsel for Defendant.

I further certify that on December 17, 2007, a true copy of the foregoing document will be mailed, via first-class mail, postage pre-paid to the following non-CM/ECF participants:

Robert Dembia  
350 Broadway, Suite 210  
New York, NY 10013

s/ Charles A. Gartland II  
Charles A. Gartland II  
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*Counsel for Plaintiff Mirant New York, LLC*